IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12250 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHETH RATANJI & JIANDAS CHARITABLE TRUST NO.2 & 5 - Petitioner(s)

Versus

ASSISTANT CHARITY COMMISSIONERBHAVNAGAR - Respondent(s)

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Appearance :

MR HARSHIT S TOLIA for Petitioner No(s).: 1,2,3,4,5,6.

MRS FALGUNI PATEL, AGP for Respondent No(s).: 1.
RULE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 12/08/2005

ORAL JUDGMENT

1. Sheth Ratanji & Jivandas Charitable Trust No.2 and others,

petitioners, have filed this petition under Articles 226 and 227 of the Constitution of India for quashing and setting aside the impugned judgment and order dated 21.4.2005 passed by the respondent authority – Assistant Charity Commissioner, Bhavnagar, and further to direct the respondent authority to cause entries in the register kept under Section 17 of the Bombay Public Trust Act, to be made or amended in regard to the petitioner trust in accordance with the judgment and order dated 8.1.1958 passed by the Bombay City Civil Court in Suit No.2581 of 1957.

2. The petition was filed on 20th June, 2005. This Court has passed the order on 27th June, 2005. Pursuant to that, the matter is placed for final hearing. With consent of parties the matter is taken up for hearing and final disposal.

3. The facts giving rise to this petition are as under:-

3.1 The petitioner trust is registered under the provisions of Bombay Public Trust Act, 1950 (hereinafter referred to as “the

Act"). The trust deed of the petitioner trust is executed on 30.8.1949. As per the condition of the trust deed, only family members of the founder families of the trust can be appointed as new trustees. However, since no family members were available, all the acting trustees the then applied to Bombay City Civil Court by way of Charity Application No.15/57 to allow to appoint 4 new trustees other than family members of the founder families. The said application was allowed on 26.6.1957 by the Bombay City Civil Court and 4 (four) new trustees were appointed including the present petitioner No.2. The petitioners have produced the order of Bombay Civil Court on page 15 of the paper book.

3.2 The petitioners submitted that thereafter the then trustees again filed a suit bearing No.2581/87 before the Bombay City Civil Court inter alia mainly praying to amend Clause 20 of the Trust Deed to the effect to give trustees of the trust the power to appoint any person other than founder families of the trust as new trustees, provided no member from founder families are available.

3.3 The Bombay City Civil Court by order dated 8.1.1958 pleased to pass an order in the above referred suit to the effect that the acting trustees of the petitioner trust have been given power to appoint any other respectable Gujarati Hindu as trustee/trustees than the founder families.

3.4 From the record it appears that the first Change Report No.173/80 was submitted before the respondent authority and appointment of new trustees were affected with effect from 11.3.1980. Thereafter second Change Report No.356/83 was submitted and appointment of new trustees were affected with effect from 2.9.1983 and again the third Change Report No.80/95 was submitted and appointment of new trustees were affected with effect from 13.10.1995. Thereafter on 14.6.2000 the fourth Change Report no.85/2000 in respect of mode of succession of trusteeship of the petitioner trust was allowed by the respondent authority. Thereafter, for a long time, there was no objection or challenge to the above referred change reports. However, after a long time the aforesaid 4 change reports were challenged before the Charity

Commissioner, Rajkot, by way of filing Revision under Section 70A of the Act. The above said revision was partly allowed by the Joint Charity Commissioner, Rajkot by order dated 27.7.2004.

3.5 In view of the aforesaid order, the matters were remanded back to the respondent with limited scope of inquiry as to whether the trustees are the family members of the founder or not though the same was not the prayer in the revisions.

3.6 Being aggrieved and dissatisfied with the said order, the petitioner trust challenged the said order by way of filing Civil Misc. Application under Section 72 of the Act before the learned District Judge, Bhavnagar. The learned Assistant District Judge vide order dated 25.11.2004 partly allowed the application and set aside the order of limited scope of inquiry and remanded the matter to the Assistant Charity Commissioner.

3.7 Against the said order of learned Assistant District Judge, First Appeals were preferred before this Court. However,

this Court my learned Brother Justice A.M.Kapadia by order dated 3.2.2005 was pleased not to interfere with the order passed by the learned Assistant District Judge and the matters were disposed of with certain directions. A copy of the order has been annexed with this petition.

3.8 Thereafter the matter was heard by the respondent and the said proceedings were decided against the petitioner trust.

3.9 It is the case of the petitioners that the Bombay City Civil Court also recently sent the same decision to the respondent authority for causing necessary entries in the register as provided under Sec.26 of the Act.

4. Thereafter the petitioners submitted one application on 20.4.2005 to the respondent inter alia praying to give one certified copy of the said entry which is the statutory duty of the respondent authority to enter in the register. However, the respondent authority passed an order on 21.4.2005 without assigning any reasons to the effect that since the orders in Charity Application

No.15/57 and 2681/57 were passed and order in remand/change report application No.85/2000 is passed, the application of the petitioners is required to be filed.

4.1 In view of the same, the aforesaid petition was filed challenging the said order before this Court, as I indicated somewhere in June 2005.

5. After the matter was admitted, and during the pendency of the proceedings, the petitioners by way of amendment stated that the petitioner came to know recently about the change carried out in the mode of succession of trusteeship by Bombay City Civil Court by its order dated 8.1.1958, the trust applied to the Charity Commissioner, Bombay for carrying out necessary changed by application dated 1.6.2005. The learned Charity Commissioner, Bombay was pleased to allow the change report and pass the order dated 2.6.2005 to the effect that the reported change be recorded and Schedule-I be amended accordingly. A copy of the said order has been produced by the

petitioners at Annexure “E”.

5.1 Thereafter the petitioner trust had submitted one application below Exh.23 dated 11.3.2005 inter alia drawing attention of the respondent authority about the order passed by Bombay City Civil Court in Suit No.2581/1957 dated 8.1.1958 thereby changing the mode of succession of trusteeship. That it was requested to the respondent authority to give effect of the same in the register. However, the respondent authority has refused to give any effect to the same in its order dated 11.4.2005 passed in Change Report No.85/2000 on extraneous ground. That as the Bombay City Civil Court had forwarded the order dated 8.1.1958 passed in Suit No.2581/1957 to the respondent authority, the application as referred in the petition was submitted to the respondent authority. That the respondent authority ignored the above referred order passed by competent Civil Court though the same was brought to its notice. However, subsequently, when the said order was forwarded by the Competent Court, then the respondent authority had no option for whatsoever reason but to

give effect of the same order as per the mandate of Sec.26 of the Act.

5.2 By way of amendment, the petitioners also produced the order dated 2.6.2005 passed by learned District Judge in the application filed by the petitioner on 1.6.2005. The petitioners therefore submitted on behalf of the petitioner trust below Exh.23 dated 11.3.2005 and affidavit submitted along with the same below Exh.24 dated 11.3.2005 at Annexure “F”. Thereafter the order dated 11.4.2005 below Exh.33 passed by respondent authority in Change Report No.85/2000 at Annexure “F”.

5.3 Being aggrieved and dissatisfied with the aforesaid order, the learned advocate for the petitioner submitted that the aforesaid order has been passed contrary to Sec.26 read with Sec.17 of the Act and also Rule 5 of the Bombay Public Trusts Rules. He has also stated that the aforesaid order has been passed contrary to the earlier order passed by the Bombay City Civil Court and the said order is not taken into consideration in

this behalf. He has stated that the order does not give reasons and therefore also the order is bad in law.

5.4 The learned advocate for the petitioners has relied upon Sec.17 and Sec.26 of the Act which reads as follows:

> "Sec.17 Books, indices and registers :
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> In every Public Trusts Registrations Office or Joint Public Trusts Registration Office, it shall be the duty of the Deputy or Assistant Charity Commissioner in charge to keep and maintain such books, indices and other registers as may be prescribed. Such books, indices and registers shall contain such particulars as may also be prescribed."

> "Sec.26 Contract to forward copy of decision to Charity Commissioner :
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> Any Court of competent jurisdiction deciding any question relating to any public trust which by or under the provisions of this Act is not expressly or impliedly

barred from deciding shall cause copy of such decision to be sent to the Charity Commissioner and the Charity Commissioner shall cause the entries in the register kept under section 17 to be made or amended in regard to such public trust in accordance with such decision. The amendments so made shall not be altered except in cases where such decision has been varied in appeal or revision by a Court of competent jurisdiction. Subject to jurisdiction. Subject to such alterations, the amendments made shall be final and conclusive."

5.5 Mr.Tolia, learned advocate for the petitioners has also relied upon Rule 5 of the Bombay Public Trusts Rules, 1961 which provides maintenance of a register of a public trusts. He has also referred to Schedule I, Item No.4 which is under Rule 5 which provides mode of succession to trusteeship and managership.

6. On behalf of respondent, the learned AGP has tried to support the order passed by the authority in this behalf.

7. I have gone through the contention raised by the petitioners and also Sec.17 and Sec.26 of the Act, Rule 5 of the Bombay Public Trusts Rules and Schedule I of the said Rule. In my view a bare perusal of the above provisions namely Sec.26 of the Act clarifies that it is the statutory duty of the Charity Commissioner to give effect of any decision rendered by concerned court in respect of the public trust in the register to be made or amended in accordance with such decision. In the present case, the Bombay City Civil Court has rendered a decision which is till date not challenged and the same has become final and therefore the respondent authority is required to implement the same by operation of law.

8. In my view the provisions of Sec.17 read with Sec.26 of the Act it is very clear and, therefore, any decision of the Civil Court would also prevail over any order/decision taken by any such authority like the respondent authority. Further Sec.26 of the Act clarifies that such entries cannot be altered except in cases

where such decision has been varied in appeal or revision by a court of competent jurisdiction. It is further provided in the said provision that, subject to such alteration, the amendments made, shall be final and conclusive. Thus, the binding effect of the decision of the Court is explained in very definite terms in Sec.26 of the Act. However, the respondent authority has completely ignored the order of the Bombay City Civil Court and did not give effect of the said decision which would prevail over any of the decision rendered by the authority. In my view though there is a delay in sending the order of Bombay City Civil Court, but it is undisputed fact that the order is passed by a competent court having jurisdiction and the said decision of the concerned court is not challenged till date and, therefore, the respondent authority has no option but to follow the provisions of Sec.26 of the Act, and therefore the order of the authority is contrary to and inconsistent with Sec.26 of the Act is illegal, bad and liable to be set aside. In my view the order of the authority not taking into consideration Sec.26 of the Act and thereby not giving effect of the order passed by the Bombay City Civil Court

to the public trust register maintained under Sec.17 of the Act is also illegal and bad in law and the same deserves to be set aside in this behalf. In my view on conjoint reading of Sec.17, Sec.26 of the Act and Rule 5 of the Bombay Public Trusts Rules and Schedule - I leaves no room of doubt and therefore the order of authority is liable to be quashed and set aside.

9. The legality and validity of the order can also examined by another angle also. The contention of the petitioner is that order of Charity Commissioner is also bad on the ground that order does not give reasons. The order is also liable to be set aside because the authority has not given any reasons in this behalf. The petitioner has relied upon the judgment of the Hon'ble Apex Court in the case of Cyril Lasrado (dead) by Lrs. & others Vs. Julian Maria Lasrado and another reported in (2004) 7 SCC 431 where the Hon'ble Supreme Court stated that duty to give reasons on page 436 and the said decision has also been followed by this Court in Special Civil Application No.3234 of 1986 decided on 15th April, 2005, (Coram: K.M.Mehta, J.) where

also this Court has held that the quasi-judicial authority must give reasons. In view of the same, as the authority has not given reasons, therefore also the same is liable to be quashed and set aside. The impugned order dated 21.4.2005 passed by the respondent authority is quashed and set aside on that ground also. The authority is directed to give effect to the order of the Bombay City Civil Court dated 8.1.1958 passed in Suit No.2581/1987. Rule is made absolute to that extent. D.S. Permitted.

(K.M. Mehta, J.)

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